

Tricia Wang (CA Bar No: 178473)
 LAW OFFICE OF TRICIA WANG
 39159 Paseo Padre Parkway, Suite 205
 Fremont, CA 94538
 Telephone: (510) 791-0232
 Fax: (510) 791-5609

Attorney for Plaintiff: Chen, Xiling

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE, CALIFORNIA**

Xiling CHEN

Plaintiff,

vs.

Alberto Gonzales, Attorney General of the
 United States; Michael Chertoff, Secretary of the
 Department of Homeland Security; Emilio Gonzalez
 Director of United States Citizenship & Immigration
 Services; Robert Mueller, Director of the Federal
 Bureau of Investigations; Gerard Heinauer,
 Director of the Nebraska Service Center

Defendants

)
)
)
)
) Case No. C 07-4698 JW

)
) PLAINTIFF'S REPLY
) TO DEFENDANTS' OPPOSITION
) TO PLAINTIFF'S MOTION FOR
) SUMMARY JUDGMENT

) Date: April 21, 2008
) Time: 9:00 am
) Courtroom: 8, 4th Floor

Based on the statutes and case law cited in previous filings, Plaintiff Xiling Chen maintains her position on this Court's jurisdiction over this matter. Defendants have unlawfully and unreasonably failed to carry out the adjudicative functions delegated by law and relief from this Court is warranted under both the Mandamus Act and the APA.

In response to the numerous mandamus lawsuits across the country, both concerning adjustment of status application and naturalization applications, Defendants have recently released two plans to address the notorious FBI name check delay. One is the Interoffice Memorandum dated February 4, 2008 from Michael Aytes, the other is News Release just recently announced on April 2, 2008, both are included in the exhibits of Defendants' Reply. While we welcome these measures finally taken by the Defendants CIS and FBI, these measures do not change the nature of this case, i.e. it does not make the

1 unreasonable delay the Plaintiff has suffered reasonable.

2 Plaintiff Xiling Chen filed her adjustment of status as a derivative applicant on
3 April 19, 2004, the same date her husband filed his adjustment of status application. Her
4 application has been pending since April 19, 2004, NOT January 19, 2005. Her husband's
5 application was approved on January 19, 2005. Being a derivative, her application could
6 have been approved on January 19, 2005, "but for" for her pending name check.

7 According to the Aytes' Memo dated February 4, 2008, if an adjustment of status
8 application that is otherwise approvable and the FBI name check request has been pending
9 for more than 180 days, the adjudicator shall approve the application. After the publication
10 of the Aytes' Memo, Plaintiff immediately contacted the Defendants. Plaintiff was
11 informed that all the applications affected by the Aytes' Memo will be queued up and
12 adjudicated in the order of the pending time. However, up to the present time, more than
13 two months after the publication of the Aytes' Memo, Xiling Chen's application remains
14 pending, despite her long pending time of 4 years!! Applications affected by the Aytes'
15 Memo with pending time far less than Plaintiff's application were getting approved!

16 On or about March 19, 2008, Defendants offered to stipulate to dismiss this
17 mandamus lawsuit by agreeing to adjudicate Xiling Chen's application by April 30, 2008.
18 Plaintiff Xiling Chen, who has suffered immeasurable impact from this formidable delay,
19 has lost her confidence in our government and declined to take this offer. However,
20 Plaintiff did relay her willingness to dismiss this case after she receives a decision by
21 Defendants on her adjustment of status application.

22 Plaintiff claims that the delay of 4 years by the Defendants in adjudicating her
23 adjustment of status is clearly unreasonable as a matter of law. Plaintiff further claims that
24 the delay of more than two months in adjudicating her application after the Aytes' Memo is
25 unreasonable, and the delay of more than 30 days in adjudicating her application after
26 identifying her application for adjudication on or about March 19, 2008 is unreasonable, in
27 view of the total circumstances. After all, this is a derivative adjustment of status
28 application pending since April 19, 2004, with the Principal's adjustment of status being

1 approved over three years ago!!! According to the Defendants, this application was ready
2 for adjudication long time ago “but for” the pending name check. Now that the name check
3 is no longer an issue, the continuing delay on Plaintiff’s application becomes even more
4 unreasonable and unacceptable.

5 For the foregoing reasons, Plaintiff respectfully asks this Court to dismiss
6 Defendant’s motion and grant Plaintiff’s motion for summary judgment as a matter of law.

7

8 Dated: April 8, 2008

Respectfully submitted,

9

10

/s/

11

Tricia Wang
Attorney for Plaintiff

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28